(48)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Criminal Revision No. 633 of 2006

Dr. Premish Verma

versus

Lokesh Sharma

ORDER

Post for 13 -11-2007

Sd-/
Dilip Raosaheb Deshmukh
Judge

A.F.R.
13.11.2007
49

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Criminal Revision No.633 of 2006

Applicant — Dr. Premish Verma, aged 56 years, S/o I.P.Verma, Verma City and Sonography, X-Ray Center, T.P. Nagar, Korba

versus

Non-Applicant — Lokesh Sharma, S/o Shri J.K.Sharma, Pro. Axay Agency, Shitla Mandir Ke Pass, Amapara, Raipur

Criminal Revision under Section 397/401 of the Code of Criminal Procedure, 1973

Present : Applicant by Shri Ashish Shrivastava, learned counsel.
Non-Applicant by Shri Pravin Kumar Tulsiyan with Shri Vivek Rathore, learned counsel.

ORDER

(Passed on 13th day of November, 2007)

In this revision, the order dated 19-07-2006 passed by Shri G. K. Mishra, Additional Sessions Judge, Korba (hereinafter referred to as 'the ASJ') in Criminal Revision No.6/06 is under challenge, whereby the order dated 21-02-2006 passed by the Judicial Magistrate First Class, Korba rejecting the objection as to the maintainability of the complaint filed by the applicant herein under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act') was reversed.

(2) Brief facts are that during commercial transactions, to satisfy a legally enforceable debt, Cheque No.154749 dated 09-04-2003 drawn by the non-applicant on Indira Priyadarshini Mahila Nagrik Sahakari Bank Limited, Press Complex, Sadar Bazar, Raipur (C.G.) for a sum of Rs.5 Lakhs was given to the applicant which was presented by the applicant to his banker, i.e., the Bank of India, Branch Korba (hereinafter referred to as

'the Bank'). On 23-08-2003, the applicant received information from the Bank that the aforesaid Cheque had bounced due to lack of sufficient balance in the account of the non-applicant.

(3) Upon receipt of such information from the Bank, the non-applicant was informed by the applicant on telephone on the same day and several times thereafter that the Cheque drawn by him has been returned unpaid. On 22-09-2003, the applicant sent a notice in writing under proviso (b) to Section 138 of the Act to the non-applicant under certificate of posting. Despite receipt of notice, the non-applicant failed to make payment of the said amount of money to the applicant within the statutory period mentioned in Section 138(c) of the Act. A complaint was filed by the applicant on 21-10-2003 before the Chief Judicial Magistrate, Korba under Section 138 of the Act. Statement on oath of the applicant under Section 200 of the Code of Criminal Procedure was recorded by the Chief Judicial Magistrate, Korba, who took cognizance of the offence under Section 138 of the Act on 31-10-2003 and issued notice to the non-applicant. On 24-12-2004, an objection was filed by the non-applicant regarding the maintainability of the complaint on the sole ground that legal notice as contemplated under Section 138(b) of the Act was not given by the applicant within the statutory period of thirty days from the receipt of information by the applicant from the Bank regarding the return of the Cheque as unpaid. This application was considered by Shri P.S.Markam, Judicial Magistrate First Class, Korba (hereinafter referred to as 'the Magistrate'), to which Court the case was transferred on 15-09-2004.

(4) Although, the objection as to maintainability of the complaint pertained to proviso (b) to Section 138 of the Act, the Magistrate considered the objection as if it was for non-compliance of sub-clause (b) of Section 142 of the Act. Consequently, the objection was turned down

on the ground that the applicant had within one month of the notice dated 22-09-2003 made the complaint as contemplated under Section 142(b) read with proviso (c) to Section 138 of the Act.

(5) Being aggrieved, the non-applicant herein preferred Criminal Revision No.6/06 before the Sessions Judge, Korba. By the impugned order, the ASJ allowed the revision on the ground that notice as contemplated by the proviso (b) to Section 138 of the Act was not given by the applicant/payee within thirty days of the receipt of information by him from the Bank regarding the return of the Cheque as unpaid. The ASJ reckoned the period of limitation from 23-08-2003, i.e., including the date of receipt of information by the payee from the Bank regarding the return of the Cheque as unpaid and arrived at a conclusion that the notice dated 22-09-2003 having been given on the 31st day was beyond the statutory period of thirty days provided under the proviso (b) to Section 138 of the Act. As a result, the ASJ held that the cognizance taken by the Magistrate was bad for non-compliance of the proviso (b) to Section 138 of the Act. Consequently, the ASJ dismissed the complaint by the impugned order which is under challenge in this revision.

(6) Shri Ashish Shrivastava, learned counsel for the applicant argued that in such a situation under Section 9 of the General Clauses Act as also Section 12 of the Limitation Act, the date of receipt of information by the payee from the Bank regarding the return of the Cheque as unpaid is to be excluded while computing the statutory period of thirty days within which the payee is required under the proviso (b) to Section 138 of the Act to give a notice in writing to the drawer of the Cheque, i.e., the non-applicant. Reliance was placed on ***Saketh India Ltd. and others*** **vs.** ***India Securities Ltd.***, **(1999) 3 SCC 1**, ***Jindal Steel and Power Ltd. and another*** **vs.** ***Ashoka Alloy Steel Ltd. and others***, **(2006) 9 SCC 340**,

52

***Prem Chand Vijay Kumar* vs. *Yashpal Singh and another*, (2005) 4 SCC 417**, ***Tarun Prasad Chatterjee* vs. *Dinanath Sharma*, (2000) 8 SCC 649**, ***Padma Charan Mohapatra* vs. *Superintendent of Police, cum Taxing Authority of Phulbani*, AIR 1965 Orissa 71** and ***Srinivasa Silk Mills, Seshadripuram and others* vs. *State of Mysore and others*, AIR 1962 Mysore 117**.

(7) On the other hand, Shri Pravin Kumar Tulsiyan with Shri Vivek Rathore, learned counsel for the non-applicant argued that the word "within" used in the proviso (b) to Section 138 of the Act takes into its fold the day of receipt of information by the payee from the Bank regarding the return of the Cheque as unpaid. It was also contended that proviso (b) to Section 138 of the Act as also proviso (b) to Section 142 of the Act uses the word "of" after the words "within thirty days" and not the word "from" to attract Section 12 of the Limitation Act or Section 9 of the General Clauses Act, wherein the word used is "from" and not the word "of". It was also urged while placing reliance on ***M/s SIL Import, USA* vs. *M/s Exim Aides Silk Exporters, Bangalore*, AIR 1999 SC 1609** that with the advent of e-commerce and technology, the applicant was not precluded from sending the notice in writing by fax, courier or e-mail on 23-08-2003 even if the information from the Bank had reached the applicant late in the day. Therefore, the applicant could not seek exclusion of the date of receipt of information by him from the Bank regarding return of the Cheque as unpaid while computing the statutory limit of thirty days provided under proviso (b) to Section 138 of the Act. It was, thus, clear as day that notice in writing was given on 22-09-2003 i.e. the 31st day. On these premises, it was urged that no cause of action could be said to have arisen in favour of the applicant for filing the complaint under Section 142(a) of the Act. Reliance was also placed on ***M/s Munoth Investments Ltd.* vs. *M/s***

***Puttukola Properties Ltd. and another*, 2001 Cri.L.J. 4167 (Supreme Court)** and ***Balkrishna Maheshwari* vs. *Meena @ Chaman Jain*, 2007 (1) MPWN 64**.

(8) Having considered the rival submissions, I have perused the record with utmost circumspection. At the outset, I must say that there was complete failure on the part of the Magistrate to consider the objection regarding maintainability of the complaint in its true perspective because he failed to notice that the objection was regarding non-compliance of proviso (b) to Section 138 of the Act. As a result, the Magistrate considered only proviso (b) to Section 142 of the Act and held that the complaint was made within limitation. Such an error reflects failure on the part of the Magistrate to undertake a minute examination of the objection and the proviso (b) of Section 138 of the Act in its true perspective and to peruse the record with circumspection. It also escaped the notice of the ASJ that the objection regarding non-compliance of proviso (b) to Section 138 of the Act had not been considered at all by the Magistrate. Be that as it may, I shall now proceed to examine the rival contentions.

(9) Before appreciating the contentions raised by the learned counsel, it would be necessary to reproduce Sections 138 and 142 of the Act, which are as under:

> **"138. Dishonour of cheque for insufficiency, etc., of funds in the account.** – Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an

agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless–

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation. – For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability."

(emphasis supplied by me)

"142. Cognizance of offences. – Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)–

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause-of-action arises under clause (c) of the proviso to section 138;

55

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."

(emphasis supplied by me)

(10) Afore-quoted Section 138 of the Act, *inter alia*, provides that where any cheque drawn by a person is returned by the bank unpaid, such person shall be deemed to have committed an offence, however, it will apply, if the conditions mentioned in clauses (a), (b) and (c) are satisfied. The following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138 of the Act:

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within fifteen days of the receipt of the notice.

Section 142 further provides that the Court shall take cognizance of any offence punishable under Section 138 on a written complaint made by the payee or the holder in due course, if such complaint is filed within one month of the date on which the cause of action arises. A month is to be reckoned according to the British calendar as defined in the General Clauses Act, 1897. The question, which arises for consideration in this revision, would be, whether for calculating the period of thirty days, which

56

is prescribed under proviso (b) to Section 138 of the Act, the period has to be reckoned by excluding the date on which the information from the Bank is received.

(11) In ***Saketh India Ltd. and others*** **vs.** ***India Securities Ltd.*** (supra), the words "within one month of the date on which the cause of action arises under proviso (c) to Section 138 of the Act" appearing in Section 142(b) of the Act came for consideration before the Apex Court. These words are akin to the words "within thirty days of the receipt of information by him from the Bank" found in proviso (b) to Section 138 of the Act. Paragraphs 5, 6 and 7 of the judgment of the Apex Court in ***Saketh India Ltd. and others*** **vs.** ***India Securities Ltd.*** (supra) need reproduction, as under:

> "**5.** Afore-quoted Section 138 of the Act inter alia provides that where any cheque drawn by a person is returned by the bank unpaid, such person shall be deemed to have committed an offence, however, it will apply, if the conditions mentioned in clauses (a), (b) and (c) are satisfied. Section 142 further provides that the court shall take cognizance of any offence punishable under Section 138 on a written complaint made by the payee or the holder in due course, if such complaint is filed within one month of the date on which the cause of action arises. A month is to be reckoned according to the British calendar as defined in the General Clauses Act, 1897. The question would be, whether for calculating the period of one month which is prescribed under Section 142(b), the period has to be reckoned by excluding the date on which the cause of action arose."
>
> "**6.** Similar contention was considered by this Court in the case of *Haru Das Gupta* v. *State of W.B. [(1972) 1 SCC 639]* wherein it was held that the rule is well established that where a particular time is given from a

57

certain date within which an act is to be done, the day on that date is to be excluded; the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was 5-2-1971, before the expiration of which the order of decision for confirming the detention order and continuing the detention thereunder had to be made, the date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated 5-5-1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle, the Court referred to the principle followed in English courts. The relevant discussion is hereunder: (SCC p. 641, para 5)

"5. These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. (See *Goldsmiths Company* v. *The West Metropolitan Railway Company [(1904) 1 KB 1, 5]* KB at p. 5.) This rule was followed in *Cartwright* v. *MacCormack [(1963) 1 All ER 11, 13] :* All ER at p. 13, where the expression "fifteen days from the date of commencement of the policy" in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in *Marren* v. *Dawson Bentley & Co. Ltd. [(1961) 2 QB 135],* a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of

58

action, was excluded. (See also *Stewart* v. *Chapman [(1951) 2 KB 792]* and *In re North, Ex parte Wasluck [(1895) 2 QB 264].*) Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. [See *Halsbury's Laws of England,* (3rd Edn.), Vol. 37, pp. 92 and 95.] There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."

"**7.** The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. Similar provisions made in sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to"."

(12) The decision in the case of ***Saketh India Ltd. and others*** **vs.** ***India Securities Ltd.*** (supra) was followed by the Apex Court in the case of ***Jindal Steel and Power Ltd. and another*** **vs.** ***Ashoka Alloy Steel Ltd. and others*** (supra).

(13) Section 9 of the General Clauses Act reads as under:

"**9. Commencement and termination of time.** – (1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient for the

purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "or".

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

(14) Section 12 of the Limitation Act reads as under:

"**12. Exclusion of time in legal proceedings.** – (1) In computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded.

(2) In computing the period of limitation for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.

(3) Where a decree or order is appealed from or sought to be revised or reviewed, or where an application is made for leave to appeal from a decree or order, the time requisite for obtaining a copy of the judgment shall also be excluded.

(4) In computing the period of limitation for an application to set aside an award, the time requisite for obtaining a copy of the award shall be excluded.

Explanation. – In computing under this section the time requisite for obtaining a copy of a decree or an order, any time taken by the Court to prepare the decree or order before an application for a copy thereof is made shall not be excluded."

(15) It is to be noticed that whereas proviso (a), (b) and (c) to Section 138 of the Act as also Section 142 of the Act uses the word "of" after the words providing the statutory period during which payee or holder of the Cheque is required to act, Section 9 of the General Clauses Act and Section 12 of the Limitation Act use the word "from" instead of "of". It is, therefore, necessary to consider what is the purport of the word "of".

(16) In ***Vasantlal Ranchhoddas Patel and others* vs. *Union of India and others*, AIR 1967 Bombay 138**, it was held that the word "of" in the expression "within six months of the seizure of the goods" used in sub-section (2) of Section 110 of the Customs Act should be read as "from". Placing reliance on ***Ex parte Fallon*, (1793) 5 Term Rep 283**, in which the word used was "of" and not "from", it was observed that "of", "from" and "after" really meant the same thing and that no distinction could be suggested from the nature of the two provisions. In Stroud's Judicial Dictionary, Vol. 3, 1953 Edition in Note (5) under the word "of", it has been observed that "of" is sometimes the equivalent of "after" e.g. in the expression "within 21 days of the execution". The principle underlying Section 9 of the General Clauses Act cannot, therefore, be held to be inapplicable, merely because the word used in sub-section (2) of Section 110 is "of" and not "from".

(17) In re ***V.S.Metha and others*, AIR 1970 AP 234,** while considering the provision contained in Section 106 of the Factories Act, 1948 using the words "within three months of the date", it was held that the word "of" is sometimes equivalent to the word "after". This meaning is also to be found in the Advanced Law Lexicon by P. Ramanatha Aiyar, 3rd Edition 2005 at page 3300 as also in Stroud's Judicial Dictionary.

(18) In *Halsbury's Laws of England,* 37th Edn., Vol. 3, p. 92, it is stated as follows:

> "Days included or excluded – When a period of time running from a given day or even to another day or event is prescribed by law or fixed as contract, and the question arises whether the computation is to be made inclusively or exclusively of the first-mentioned or of the last-mentioned day, regard must be had to the context and to the purposes for which the computation has to be made. Where there is room for doubt, the enactment or instrument ought to be so construed as to effectuate and not to defeat the intention of Parliament or of the parties, as the case may be. Expressions such as 'from such a day' or 'until such a day' are equivocal, since they do not make it clear whether the inclusion or the exclusion of the day named may be intended. As a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

(19) The Apex Court, in ***Tarun Prasad Chatterjee*** **vs.** ***Dinanath Sharma*** (supra), while interpreting the words "within forty-five days from but not earlier than the date of an election of the returned candidate" used in Section 81(1) of the Representation of the People Act, 1951 relating to presentation of petitions, considered the scope of Section 9 of the General Clauses Act and observed as under:

> "**12.** Section 9 says that in any Central Act or regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any period of time, to use the word "to". The principle is that when a period is delimited by statute or rule, which has both a beginning and an end, and the word "from" is

62

> used indicating the beginning, the opening day is to be excluded and if the last day is to be included the word "to" is to be used. In order to exclude the first day of the period, the crucial thing to be noted is whether the period of limitation is delimited by a series of days or by any fixed period. This is intended to obviate the difficulties or inconvenience that may be caused to some parties. For instance, if a policy of insurance has to be good for one day from 1st January, it might be valid only for a few hours after its execution and the party or the beneficiary in the insurance policy would not get reasonable time to lay claim, unless 1st January is excluded from the period of computation."

It was held that the date of election of the returned candidate was to be excluded in computing the period of limitation.

(20) The arguments advanced by learned counsel for the non-applicant/drawer of the Cheque that the word "within" signifies that the date on which information was received from the Bank that the Cheque has been returned unpaid is included for computation of limitation can also not be countenanced. In the Law Lexicon by P. Ramanatha Aiyar, 1997 Edition, the word "within" in relation to a period of time does not usually mean "during" or throughout the whole of; it is more frequently used to delimit a period 'inside which' certain events may happen. In relation to time, the word "within" means "in the limits of", "before the end of" and "after not more than". It is further stated that the word "within" used in the context of a period of time, is capable of meaning "before or at the expiry of" the period. In *D.M.Thippaswamy* vs. *Mysore Revenue Appellate Tribunal Bangalore*, AIR 1972 Mys 50, 53, *Miss Avi J. Cama* vs. *Banevarilal Agarwal*, AIR 1953 Nagpur 81, 84 and *Manorlike Limited* vs. *Le Vitas Travel Agency and Consultancy Services Limited*, (1986) 1 All ER 573, 575 (CA) as also in Stroud's Judicial Dictionary also the same

meaning has been attributed to the word "within". Therefore, the arguments advanced by learned counsel for the non-applicant/drawer of the Cheque is liable to rejection.

(21) Learned counsel for the non-applicant has placed reliance on ***M/s Munoth Investments Ltd.*** **vs.** ***M/s Puttukola Properties Ltd. and another*** (supra) for the proposition that the Apex Court has held in that case in paragraph 5 that fifteen days are to be counted from the receipt of information regarding the return of the cheque as unpaid. However, upon a careful perusal of the judgment of the Apex Court, it appears that the above observation was made by the Apex Court in a generic sense and not while interpreting the words "within fifteen days of the receipt of information". In that case, the complainant had due to an error mentioned in the complaint that the cheque was returned on 13th January, 1994, whereas it was not correct because the complainant had led evidence to show that 14th to 16th were holidays and, therefore, he came to learn about the dishonour of his cheque on 17th January, 1994. Therefore, in my considered opinion in ***M/s Munoth Investments Ltd.*** **vs.** ***M/s Puttukola Properties Ltd. and another*** (supra), the Apex Court was not laying down the law that in construing the words "within fifteen days of the receipt of information by him from the Bank regarding the return of the cheque as unpaid" the day of receipt of information from the bank has to be included while computing the limitation of fifteen days as the unamended provision then was. Therefore, the argument of the learned counsel for the non-applicant cannot be accepted in view of the dictum of the Apex Court in ***Saketh India Ltd. and others*** **vs.** ***India Securities Ltd.*** (supra).

(22) The case of ***Balkrishna Maheshwari*** **vs.** ***Meena @ Chaman Jain*** (supra) cited by learned counsel for the non-applicant also does not help the non-applicant in any manner because the question whether the day of

receipt of information regarding dishonour of the cheque by the payee from the Bank would be included while computing the period of limitation was not in question in that case.

(23) The applicant mentioned in the complaint as also in the notice and in his statement under Section 200 of the Code of Criminal Procedure that he repeatedly telephoned the non-applicant/drawer of the cheque not only on the date of receipt of information from the Bank about dishonour of the cheque, but also repeatedly thereafter prior to giving of the notice on 23-08-2003. However, this does not amount to compliance of proviso (b) to Section 138 of the Act because the words "by giving a notice in writing" show the clear and unambiguous intention of the Legislature that such a notice has to be in writing and, therefore, the making of the telephone call on the date of receipt of information from the Bank to the drawer of the cheque would not suffice to comply with the proviso (b) to Section 138 of the Act. Had the applicant sent a copy of the notice by fax or by courier to the non-applicant/drawer of the cheque within the statutory period, it would have been sufficient compliance of the proviso (b) to Section 138 of the Act. In ***M/s SIL Import, USA* vs. *M/s Exim Aides Silk Exporters, Bangalore*** (supra), the Apex Court made the following observations, which need reproduction as under:

> **"13.** The duty cast on the payee on receipt of information regarding the return of the cheque unpaid is mentioned in clause (b) of Section 138. Within15 days he has to make a demand for payment. The mode of making such a demand is also prescribed in the clause, that it should be "by giving notice in writing to the drawer of the cheque". Nowhere is it said that such notice must be sent by registered post or that it should be dispatched through a messenger.
>
> **14.** Chapter XVII of the Act, containing Sections 138 to 142, was inserted in the Act as per the Banking Public

Financial Institution and Negotiable Instruments Laws (Amendment) Act, 1988. When the legislature contemplated that notice in writing should be given to the drawer of the cheque, the legislature must be presumed to have been aware of the modern devices and equipment already in vogue and also in store for future. If the court were to interpret the words "giving notice in writing" in the section as restricted to the customary mode of sending notice through postal service or even by personal delivery, the interpretative process would fail to cope up with the change of time.

15. Facsimile (or fax) is a way of sending handwritten or printed or typed material as well as pictures by wire or radio. In the West such mode of transmission came to wide use even way back in the late 1930s. By 1954 the International News Service began to use facsimile quite extensively. Technological advancement like facsimile, internet, e-mail etc. were in swift progress even before the Bill for the Amendment Act was discussed by Parliament. So when Parliament contemplated notice in writing to be given we cannot overlook the fact that Parliament was aware of modern devices and equipment already in vogue.

16. Francis Bennion in *Statutory Interpretation* has stressed the need to interpret a statute by making "allowances for any relevant changes that have occurred, since the Act's passing, in law, social conditions, technology, the meaning of words, and other matters".

17. For the need to update legislations, the courts have the duty to use interpretative process to the fullest extent permissible by the enactment. The following passage at p. 167 of the above book has been quoted with approval by a three-Judge Bench of this Court in *State* v. *S.J.Choudhary (1996) 2 SCC 428 : 1996 SCC (Cri) 336.*

> "It is presumed that Parliament intends the court to apply to an ongoing Act a construction that continuously updates its wording to allow for changes since the Act was initially framed (an updating construction). While it remains law, it is to

66

> be treated as always speaking. This means that in its application on any date, the language of the Act, though necessarily embedded in its own time, is nevertheless to be construed in accordance with the need to treat it as current law."
>
> **18.** So if the notice envisaged in clause (b) of the proviso to Section 138 was transmitted by fax it would be in compliance with the legal requirement."

However, in the present case, such a fact situation does not arise because the notice, as contemplated by proviso (b) to Section 138 of the Act, was neither sent by fax nor by courier service.

(24) In view of the aforementioned discussion, the word "of" used in proviso (a), (b) and (c) to Section 138 of the Act as also in Section 142(b) of the Act is akin to the word "from". Provision contained in Section 9 of the General Clauses Act as also Section 12 of the Limitation Act are therefore applicable. The interpretation of the words "within fifteen days of the receipt of the said notice" appearing in proviso (c) to Section 138 of the Act by the Apex Court in ***Saketh India Ltd. and others*** **vs.** ***India Securities Ltd.*** (supra) applies with full force to the present case. Therefore, the date on which the information from the Bank was received by the payee or the holder of the cheque is to be excluded while reckoning the period of thirty days within which the payee is required under proviso (b) to Section 138 of the Act to give a notice in writing to the drawer of the cheque making a demand for the said amount of money. In the present case, since the information from the bank was received by the payee or the holder of the cheque on 23-08-2003 and notice was given on 22-09-2003, therefore, excluding the date on which the information was received by the payee or the holder of the cheque, the notice was given on the 30th day, i.e., within a period of thirty days of the receipt of information by the payee from the bank regarding the return of the cheque as unpaid.

Therefore, the ASJ erred in holding that no cause of action arose in favour of the payee or the holder of the cheque because the said notice was given after the expiry of the period of thirty days. The view taken by the ASJ, being contrary to law is liable to be set aside.

(25) Accordingly, it is held that the notice in writing as contemplated by the proviso (b) to Section 138 of the Act was given by the applicant/payee to the non-applicant/drawer of the Cheque within a period of thirty days from the receipt of information by the payee from the Bank regarding return of Cheque as unpaid. Therefore, the objection raised by the non-applicant/drawer of the Cheque regarding maintainability of the complaint for non-compliance of proviso (b) to Section 138 of the Act must fail.

(26) In the result, the revision is allowed. The impugned order dated 19-07-2006 passed by the ASJ is set aside.

Sd-/
Dilip Raosaheb Deshmukh
Judge